

LEE A. GOLDSTEIN, O.D. MPA
PRESIDENT
BOARD OF OPTOMETRY

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

State Bar No. 083047
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5339
Facsimile: (916) 327-8643
Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

HUYEN MONG NGUYEN
1010-B Florin Road
Sacramento, CA 95831

**Certificate of Registration to Practice
Optometry No. 10148,**

Respondent.

Case No. CC 2002-162

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

PARTIES

1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
Optometry. She brought this action solely in her official capacity and is represented in this matter
by Edmund G. Brown Jr., Attorney General of the State of California, by Arthur D. Taggart,
Supervising Deputy Attorney General.

2. Respondent Huyen Mong Nguyen (Respondent) is representing herself in this
proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about September 10, 1993, the State Board of Optometry issued Certificate of
Registration to Practice Optometry No. 10148 to Huyen Mong Nguyen (Respondent). The

1 Certificate of Registration to Practice Optometry was in full force and effect at all times relevant
2 to the charges brought in Petition to Revoke Probation No. CC 2002-162 and will expire on
3 October 31, 2011, unless renewed.

4 **JURISDICTION**

5 4. Petition to Revoke Probation No. CC 2002-162 was filed before the State Board of
6 Optometry (Board), Department of Consumer Affairs, and is currently pending against
7 Respondent. The Petition to Revoke Probation and all other statutorily required documents were
8 properly served on Respondent on May 24, 2010. Respondent timely filed her Notice of Defense
9 contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No. CC
10 2002-162 is attached as exhibit A and incorporated herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, and understands the charges and allegations in Petition
13 to Revoke Probation No. CC 2002-162. Respondent has also carefully read and understands the
14 effects of this Stipulated Settlement and Disciplinary Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Petition to Revoke Probation; the right to be
17 represented by counsel at her own expense; the right to confront and cross-examine the witnesses
18 against her; the right to present evidence and to testify on her own behalf; the right to the issuance
19 of subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 8. Respondent admits the truth of each and every charge and allegation in Petition to
26 Revoke Probation No. CC 2002-162.

27 ///

28 ///

9. Respondent agrees that her Certificate of Registration to Practice Optometry is subject to discipline, and she agrees to be bound by the State Board of Optometry's (Board) probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the State Board of Optometry.

Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

///.

///

1
2 **DISCIPLINARY ORDER**

3 IT IS HEREBY ORDERED that Certificate of Registration to Practice Optometry No.
4 10148 issued to Respondent Huyen Mong Nguyen (Respondent) is revoked. However, the
5 ~~revocation is stayed, and Respondent is placed on probation for five (5) years on the following~~
6 terms and conditions:

7 **Extension of Probation.** Respondent is currently subject to terms and conditions of a five-
8 year probationary period pursuant to a Decision and Order of the State Board of Optometry
9 effective July 10, 2006 in a disciplinary action entitled "*In the Matter of the Accusation Against*
10 *Huyen Mong Nguyen.*" Respondent's current probation and all of its terms and conditions shall
11 remain in effect until and unless this Stipulated Settlement is adopted by the Board. Once this
12 Stipulated Settlement is adopted by the Board, Respondent will then be placed on probation for
13 an additional five (5) year period of time from the effective date of the adoption of this Stipulated
14 Settlement and Disciplinary Order by the Board.

15 **SEVERABILITY CLAUSE.** Each condition of probation contained herein is a separate
16 and distinct condition. If any condition of this Order, or any application thereof, is declared
17 unenforceable in whole, in part, or to any extent, the remainder of this Order and all other
18 applicants thereof, shall not be affected. Each condition of this Order shall separately be valid
19 and enforceable to the fullest extent permitted by law.

20 1. **OBEY ALL LAWS.** Respondent shall obey all laws, whether federal, state, or local.
21 The Respondent shall also obey all regulations governing the practice of optometry in California.

22 2. **QUARTERLY REPORTS.** Respondent shall file quarterly reports of compliance
23 under penalty of perjury, on forms to be provided, to the probation monitor assigned by the
24 Board. Omission or falsification in any manner of any information on these reports shall
25 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
26 to revoke probation against Respondent's optometrist license. Quarterly report forms will be
27 provided by the Board. Respondent is responsible for contacting the Board to obtain additional
28

forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. **PROBATION MONITORING PROGRAM.** Respondent shall comply with requirements of the Board-appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent shall provide to the Board the names, physical addresses, mailing addresses, telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, supervisors, managers, and contractors to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time she has a question or concern regarding her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall

1 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
2 revoke probation against Respondent's Optometrist license.

3 4. **PROBATION MONITORING COSTS.** All costs incurred for probation
4 monitoring during the entire probation shall be paid by the Respondent. The monthly cost for
5 probation monitoring is \$100.00 and shall be paid to the Board each month for the entire term of
6 probation. Respondent's failure to comply with all terms and conditions may also cause this
7 amount to be increased.

8 All payments for costs are to be sent directly to the Board of Optometry and must be
9 received by the first day of each month. Periods of tolling will not toll the probation monitoring
10 costs incurred.

11 If Respondent is unable to submit costs for any month, she shall be required, instead, to
12 submit an explanation of why she is unable to submit the costs, and the date(s) she will be able to
13 submit the costs, including payment amount(s). Supporting documentation and evidence of why
14 the Respondent is unable to make such payment(s) must accompany this submission.

15 Respondent understands that failure to submit costs timely is a violation of probation and
16 submission of evidence demonstrating financial hardship does not preclude the Board from
17 pursuing further disciplinary action. However, Respondent understands that by providing
18 evidence and supporting documentation of financial hardship, it may delay further disciplinary
19 action.

20 In addition to any other disciplinary action taken by the Board, an unrestricted license will
21 not be issued at the end of the probationary period and the optometrist license will not be
22 renewed, until such time as all probation monitoring costs have been paid. The filing of
23 bankruptcy by the Respondent shall not relieve the Respondent of her responsibility to reimburse
24 the Board for costs incurred.

25 5. **FUNCTION AS AN OPTOMETRIST.** Respondent shall function as an
26 optometrist for a minimum of 24 hours per week for the entire term of her probation period.

27 6. **NOTICE TO EMPLOYER.** Respondent shall provide to the Board the names,
28 physical addresses, mailing addresses, and telephone number of all employers and supervisors

1 and shall give specific, written consent that the licensee authorizes the Board and the employers
2 and supervisors to communicate regarding the licensee's work status, performance, and
3 monitoring.

4 Respondent shall be required to inform her employer, and each subsequent employer during
5 the probation period, of the discipline imposed by this decision by providing her supervisor and
6 director and all subsequent supervisors and directors with a copy of the decision and order, and
7 the Accusation in this matter prior to the beginning of or returning to employment or within 14
8 days from each change in a supervisor or director.

9 The employer will then inform the Board, in writing, that they are aware of the discipline,
10 on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to
11 obtain additional forms if needed. All reports completed by the employer must be submitted from
12 the employer directly to the Board.

13 7. **CHANGES OF EMPLOYMENT OR RESIDENCE.** Respondent shall notify the
14 Board, and appointed probation monitor, in writing, of any and all changes of employment,
15 location, and address within 14 days of such change. This includes but is not limited to, applying
16 for employment, termination or resignation from employment, change in employment status, and
17 change in supervisors, administrators, or directors.

18 Respondent shall also notify her probation monitor AND the Board, IN WRITING, of any
19 changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing
20 purposes; however, the Respondent must also provide her physical residence address as well.

21 8. **COST RECOVERY.** Respondent shall pay to the Board a sum not to exceed the
22 costs of the investigation and prosecution of this case pursuant to Business and Professions Code
23 section 125.3 That sum shall be the balance owing on the sum previously ordered in the total
24 amount of \$21,126.25 and shall be paid in full directly to the Board, in a Board-approved
25 payment plan, within six (6) months prior to the end of the probationary term. Cost recovery will
26 not be tolled.

27 If Respondent is unable to submit costs timely, she shall be required instead to submit an
28 explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she

1 will be able to submit the costs, including payment amount(s). Supporting documentation and
2 evidence of why the Respondent is unable to make such payment(s) must accompany this
3 submission.

4 Respondent understands that failure to submit costs timely is a violation of probation and
5 submission of evidence demonstrating financial hardship does not preclude the Board from
6 pursuing further disciplinary action. However, Respondent understands that by providing
7 evidence and supporting documentation of financial hardship may delay further disciplinary
8 action.

9 Consideration to financial hardship will not be given should Respondent violate this term
10 and condition, unless an unexpected AND unavoidable hardship is established from the date of
11 this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not
12 relieve the Respondent of her responsibility to reimburse the Board for these costs.

13 9. **TAKE AND PASS LICENSURE EXAMINATION.** Respondent shall take and
14 pass the California Laws and Regulations Examination (CLRE). Respondent shall pay the
15 established examination fees. If Respondent has not taken and passed the examination within
16 twelve (12) months from the effective date of this decision, Respondent shall be considered to be
17 in violation of probation.

18 10. **COMMUNITY SERVICE.** Within thirty (30) days of the effective date of this
19 decision, Respondent shall submit to the Board, for its prior approval, a community service
20 program in which Respondent provides free professional services on a regular basis to a
21 community of charitable facility or agency, amount to a minimum of sixteen (16) hours per
22 month of probation. Such services shall begin no later than sixty (60) days after the effective date
23 of this order.

24 11. **VALID LICENSE STATUS.** Respondent shall maintain a current, active, and valid
25 license for the length of the probation period. Failure to pay all fees and meet CE requirements
26 prior to her license expiration date shall constitute a violation of probation.

27 12. **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE.** Periods of
28 residency or practice outside California, whether the periods of residency or practice are

temporary or permanent, will toll the probation period but neither toll the cost recovery requirement nor the probation monitoring costs incurred. Travel out of California for more than thirty (30) days must be reported to the Board, in writing, prior to departure. Respondent may notify the Board, in writing, within 14 days, upon her return to California and prior to the commencement of any employment where representation as an optometrist was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two (2) years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case, the two-year period shall begin on the date probation is completed or terminated in that state.

13. **LICENSE SURRENDER.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board.

14. **VIOLATION OF PROBATION.** If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

1 15. **COMPLETION OF PROBATION.** Upon successful completion of probation,
2 Respondent's license shall be fully restored.

3 16. **MONITOR BILLING SYSTEM AUDIT.** Within sixty (60) days of the effective
4 date of this decision, Respondent shall provide to the Board or its designee the names and
5 qualifications of three auditors. The Board or its designee shall select one of the three auditors to
6 audit Respondent's billings for compliance with the Billing System condition of probation.
7 During said audit, randomly selected client billing records shall be reviewed in accordance with
8 accepted auditing/accounting standards and practices. If requested by the Board, the Board shall
9 be advised of the results of the audit, and may obtain any and all copies of any documents audited
10 or the results of the audit, upon request. The cost of the audits shall be borne by Respondent.
11 Failure to pay for the audits in a timely fashion or failure to provide the Board with the audit
12 results and/or copies of the audited records within ten (10) days from audit completion shall
13 constitute a violation of probation. Respondent's practice is no longer required to be monitored
14 by a supervising optometrist (Dr. Hoverman), at this point in time.

15 17. **EMPLOYMENT LIMITATIONS.** Respondent shall not work in any health care
16 setting as a supervisor of optometrists. The Board may additionally restrict Respondent from
17 supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

18 Respondent shall not work as a faculty member in an approved school of optometry or as an
19 instructor in a Board-approved continuing education program.

20 Respondent shall work only on a regularly assigned, identified and predetermined
21 worksite(s) and shall not work in a float capacity.

22 If Respondent is working or intends to work in excess of forty (40) hours per week, the
23 Board may request documentation to determine whether there should be restrictions on the hours
24 of work.

25 18. **CONTINUING EDUCATION COURSE IN ETHICS.** Within ninety (90) days of
26 the effective date of the Board's Decision and Order, Respondent shall submit the name of a
27 continuing education course in ethics for prior Board approval. Said course must be taken and
28 completed within one (1) year from the effective date of the Board's Decision and Order.

The costs associated with the ethics course shall be paid by Respondent. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. Respondent shall submit to the Board the original transcripts or certificates of completion for the ethics course. The Board shall return the original documents to Respondent after photocopying them for its records.

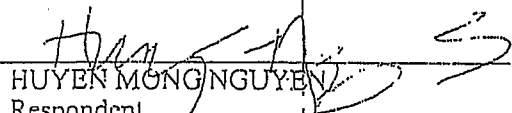
19. MENTAL HEALTH EVALUATION. Respondent shall, within 30 days of the effective date of this Decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of an optometrist. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board.

If Respondent fails to have the above assessment submitted to the Board within the 30-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

ACCEPTANCE

I understand that I have the right to retain private counsel at my own expense. I have chosen to represent myself in this proceeding. I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certificate of Registration to Practice Optometry. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: 1/14/11


HUYEN MONG NGUYEN
Respondent

11

STIPULATED SETTLEMENT (CC 2002-162)


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: 1/19/11

EDMUND G. BROWN JR.
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General


JEFFREY M. PHILLIPS
Deputy Attorney General
Attorneys for Complainant

SA2009310030
10621073.doc

Exhibit A

Petition to Revoke Probation No. CC 2002-162

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7

8 *Attorneys for Complainant*

9
10 **BEFORE THE**
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 Case No. 2002 162

13 In the Matter of the Petition to Revoke
14 Probation Against:

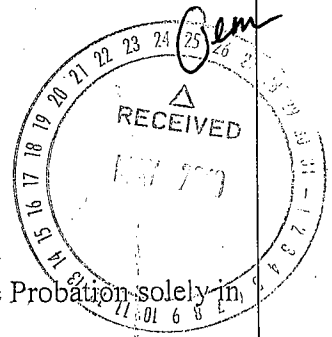
PETITION TO REVOKE PROBATION

15 **HUYEN MONG NGUYEN**
1010-B Florin Road
16 Sacramento, California 95831

17 Certificate of Registration to Practice
Optometry No. 10148

18 Fictitious Name Permit Number 2202

19
20 Respondent.



21 Complainant alleges:

22 1. Mona Maggio, ("Complainant") brings this Petition to Revoke Probation solely in
23 her official capacity as the Executive Officer of the Board of Optometry ("Board"), Department
24 of Consumer Affairs.

25 **License History**

26 2. On or about September 10, 1993, the Board issued Certificate of Registration to
27 Practice Optometry Number 10148 (also known as "Optometry License") to Huyen Mong
28

1 Nguyen ("Respondent"). Respondent's certificate of registration was in full force and effect at all
2 times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

3 **Prior Discipline**

4 3. In a disciplinary action entitled "*In the Matter of Accusation Against Huyen Mong*
5 *Nguyen*," Case No. 2002 162, the Board of Optometry issued a decision, effective July 10, 2006,
6 in which Respondent's Certificate of Registration to Practice Optometry No. 10148 was revoked.
7 However, the revocation was stayed, and Respondent was placed on probation for a period of five
8 (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and
9 is incorporated by reference.

10 **JURISDICTION**

11 4. This Petition to Revoke Probation is brought before the Board of Optometry,
12 Department of Consumer Affairs, under the authority of the following laws. All section
13 references are to the Business and Professions Code ("Code"), unless otherwise indicated.

14 5. Code sections 3024 and 3090 provide that the Board may take disciplinary action
15 against any optometry license issued by the Board, including, but not limited to, revocation or
16 suspension of the license, in addition to placing terms and conditions on the license.

17 **PETITION TO REVOKE PROBATION**

18 6. Grounds exist for revoking the probation and reimposing the order of revocation of
19 Respondent's Certificate of Registration to Practice Optometry No. 10148. Condition No. 13 of
20 the Decision and Order states:

21 **VIOLATION OF PROBATION** - If Respondent violates the conditions
22 of her probation, the Board, after giving the Respondent notice and an opportunity to
23 be heard, may set aside the stay order and impose the stayed discipline
(revocation/suspension) of the Respondent's license.

24 If, during the period of probation, an accusation or petition to revoke
25 probation has been filed against Respondent's license or the Attorney General's
26 Office has been requested to prepare an accusation or petition to revoke probation
against Respondent's license, the probationary period shall automatically be extended
and shall not expire until the accusation or petition has been acted upon by the Board.

27 7. Respondent's probation is subject to revocation because she failed to comply with
28 Probation Condition 13, referenced above, as set forth below:

1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Comply with Probation)

3 8. At all times after the effective date of Respondent's probation, Condition 3 states,
4 in pertinent part:

5 COMPLY WITH THE BOARD'S PROBATION PROGRAM -

6 Respondent shall fully comply with the conditions of the Probation Program
7 established by the Board and cooperate with representatives of the Board in its
8 monitoring and investigation of Respondent's compliance with the Board's Probation
9 Program. Respondent shall inform the Board in writing within no more than 15 days
of any address change and shall at all times maintain an active, current license status
with the Board, including during any period of suspension.

10 Respondent shall comply with the Board's probation surveillance program,
11 including but not limited to allowing access to the Respondent's optometric
practice(s) and patient records upon request of the Board or its agent.

12 9. Respondent's probation is subject to revocation because she failed to comply with
13 Probation Condition 3, referenced above. The facts and circumstances regarding this violation
14 are that Respondent has failed to obey all laws, submit timely quarterly reports, failed to obtain a
15 probation monitor in a timely fashion, and failed to comply with cost recovery payments, as
16 alleged below.

17 SECOND CAUSE TO REVOKE PROBATION

18 (Failure to Obey All Laws)

19 10. At all times after the effective date of Respondent's probation, Condition 2 states,
20 in pertinent part:

21 OBEY ALL LAWS. -

22 Respondent shall obey all federal, state and local laws. A full and
23 detailed account of any and all violations of law shall be reported by the Respondent
24 to the Board in writing within seventy-two (72) hours of occurrence. To permit
25 monitoring of compliance with this condition, Respondent shall submit completed
26 fingerprint forms and fingerprint fees within 45 days of the effective date of the
27 decision, unless previously submitted as part of the licensure application process.
28

1 11. Respondent's probation is subject to revocation because she failed to comply with
2 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
3 are that on or about September 7, 2006, Respondent drove to her probation interview with the
4 Board on an expired California drivers license.

5 **THIRD CAUSE TO REVOKE PROBATION**

6 **(Failure to Submit Timely Written Reports)**

7 12. At all times after the effective date of Respondent's probation, Condition 6 states, in
8 pertinent part:

9 **SUBMIT WRITTEN REPORTS -**

10 Respondent, during the period of probation, shall submit or cause to be
11 submitted such written reports/declarations and verification of actions under penalty
12 of perjury, as required by the Board. These reports/declarations shall contain
13 statements relative to Respondent's compliance with all of the conditions of the
Board's Probation Program. Respondent shall immediately execute all release of
information forms as may be required by the Board or its representatives.

14 Respondent shall provide a copy of this decision to the optometric regulatory
agency in every state and territory in which she has an optometry license.

15 13. Respondent's probation is subject to revocation because she failed to comply with
16 Probation Condition 6, referenced above. The facts and circumstances regarding this violation
17 are that Respondent has failed to submit timely quarterly reports, as follows: Respondent's first
18 quarterly report was due on or before October 30, 2006, with reports submitted to the board every
19 three months thereafter. Respondent submitted her first quarterly report to the Board on or about
20 November 12, 2006, which was two weeks late. Respondent then failed to submit a quarterly
21 reports for the following periods: Fourth Quarter 2006, First Quarter 2007, Second Quarter 2007,
22 Third Quarter 2007, Fourth Quarter 2007. On or about May 6, 2008 the Board received a
23 quarterly report signed by respondent on April 30, 2008 that seems to cover the First Quarter
24 2008, but was submitted five weeks late. Respondent failed to submit quarterly reports for:
25 Second Quarter 2008, Third Quarter 2008, Fourth Quarter 2008, and First Quarter 2009. On or
26 about July 15, 2009, the Board received an unsigned and undated quarterly report that seems to
27 cover the Second Quarter 2009, but was submitted two weeks late. Respondent failed to submit
28 quarterly reports for: Third Quarter 2009, Fourth Quarter 2009, First Quarter 2010.

1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with Supervision Requirements)**

3 14. At all times after the effective date of Respondent's probation, Condition 9 states, in
4 pertinent part:

5 **SUPERVISION** - Respondent shall practice under the supervision of a
6 Board-approved optometrist to conduct on site review of billings, patient records, and
prescriptions. The cost of the on site review will be borne by Respondent.

7 15. Respondent and the Board agreed that Respondent would have at least 40 hours of
8 supervised practice within the first six months of probation, beginning on July 10, 2006, with
9 quarterly reports issued by this Board monitor. Respondent's probation is subject to revocation
10 because she failed to substantially comply with Probation Condition 12, referenced above. The
11 facts and circumstances regarding this violation are that Respondent failed to obtain a supervising
12 optometrist until December 16, 2009 and failed to issue her first supervision report to the Board
13 until February 22, 2010.

14
15 **FIFTH CAUSE TO REVOKE PROBATION**

16 **(Failure to Comply with Cost Recovery Payments)**

17 16. At all times after the effective date of Respondent's probation, Condition 12 states, in
18 pertinent part:

19 **COST RECOVERY** - Respondent shall pay to the Board costs
20 associated with its investigation and enforcement pursuant to Business and
Professions Code Section 125.3 in the amount of \$21,126.25. Respondent shall be
21 permitted to pay these costs in a payment plan approved by the Board, with payments
to be completed no later than the end of the probationary period.

22 If Respondent has not complied with this condition during the time
23 indicated, and has presented sufficient documentation of her good faith efforts to
24 comply, and if no other conditions have been violated, the Board, in its discretion,
25 may grant an extension of the Respondent's probation period up to one year without
further hearing in order to comply with this condition. During the one year extension,
all original conditions of probation will apply.

26 17. Respondent had agreed to make monthly payments in the amount of \$200.00 per
27 month for the first 40 months of probation, beginning on September 30, 2006, with an additional
28 12 payments of \$1,093.85 thereafter, with the payments to be received by the Board by the 30th

day of each month. Respondent's probation is subject to revocation because she failed to substantially comply with Probation Condition 12, referenced above, as follows:

| Pymt # | Pymt Mo | Amt due | Amt Pd | Date Rec'd | Balance |
|--------|-----------|----------|----------|------------|-------------|
| | | | | | \$21,126.25 |
| 1 | Sept 2006 | \$200.00 | \$200.00 | 9/19/06 | \$20,926.25 |
| 2 | Oct 2006 | \$200.00 | \$200.00 | 11/1/06 | \$20,726.25 |
| 3 | Nov 2006 | \$200.00 | \$200.00 | 11/30/06 | \$20,526.25 |
| 4 | Dec 2006 | \$200.00 | \$200.00 | 12/29/06 | \$20,326.25 |
| 5 | Jan 2007 | \$200.00 | \$200.00 | 1/31/07 | \$20,126.25 |
| 6 | Feb 2007 | \$200.00 | \$200.00 | 2/28/07 | \$19,926.25 |
| 7 | Mar 2007 | \$200.00 | | | \$19,926.25 |
| 8 | Apr 2007 | \$200.00 | \$400.00 | 4/30/07 | \$19,526.25 |
| 9 | May 2007 | \$200.00 | \$200.00 | 5/31/07 | \$19,326.25 |
| 10 | June 2007 | \$200.00 | \$200.00 | 6/29/07 | \$19,126.25 |
| 11 | July 2007 | \$200.00 | \$200.00 | 7/31/07 | \$18,926.25 |
| 12 | Aug 2007 | \$200.00 | \$200.00 | 8/31/07 | \$18,726.25 |
| 13 | Sept 2007 | \$200.00 | | | \$18,726.25 |
| 14 | Oct 2007 | \$200.00 | \$400.00 | 11/1/07 | \$18,326.25 |
| 15 | Nov 2007 | \$200.00 | \$200.00 | 11/30/07 | \$18,126.25 |
| 16 | Dec 2007 | \$200.00 | \$200.00 | 12/31/07 | \$17,926.25 |
| 17 | Jan 2008 | \$200.00 | | | \$17,926.25 |
| 18 | Feb 2008 | \$200.00 | \$200.00 | 2/8/08 | \$17,726.25 |
| 19 | Mar 2008 | \$200.00 | \$400.00 | 3/3/08 | \$17,326.25 |
| 20 | Apr 2008 | \$200.00 | | | \$17,326.25 |
| 21 | May 2008 | \$200.00 | \$400.00 | 5/6/08 | \$16,926.25 |
| 22 | June 2008 | \$200.00 | | | \$16,926.25 |
| 23 | July 2008 | \$200.00 | \$400.00 | 7/1/08 | \$16,526.25 |
| 24 | Aug 2008 | \$200.00 | | | \$16,526.25 |

| | | | | | | |
|----|----|-----------|------------|------------|-----------------------|-------------|
| 1 | 25 | Sept 2008 | \$200.00 | | | \$16,526.25 |
| 2 | 26 | Oct 2008 | \$200.00 | \$600.00 | 10/2/08 | \$15,926.25 |
| 3 | 27 | Nov 2008 | \$200.00 | | | \$15,926.25 |
| 4 | 28 | Dec 2008 | \$200.00 | | | \$15,926.25 |
| 5 | 29 | Jan 2009 | \$200.00 | | | \$15,926.25 |
| 6 | 30 | Feb 2009 | \$200.00 | | | \$15,926.25 |
| 7 | 31 | Mar 2009 | \$200.00 | | | \$15,926.25 |
| 8 | 32 | Apr 2009 | \$200.00 | | | \$15,926.25 |
| 9 | 33 | May 2009 | \$200.00 | | | \$15,926.25 |
| 10 | 34 | June 2009 | \$200.00 | | | \$15,926.25 |
| 11 | 35 | July 2009 | \$200.00 | \$1,400.00 | 7/13/09 | \$14,526.25 |
| 12 | 36 | Aug 2009 | \$200.00 | \$400.00 | 8/25/09 | \$14,126.25 |
| 13 | 37 | Sept 2009 | \$200.00 | | | \$14,126.25 |
| 14 | 38 | Oct 2009 | \$200.00 | \$900.00 | 10/14/09 ¹ | \$13,226.25 |
| 15 | 39 | Nov 2009 | \$200.00 | | | \$13,226.25 |
| 16 | 40 | Dec 2009 | \$200.00 | | | \$13,226.25 |
| 17 | 41 | Jan 2010 | \$1,093.85 | \$1,000.00 | 1/29/10 | \$12,226.25 |
| 18 | 42 | Feb 2010 | \$1,093.85 | | | \$12,226.25 |
| 19 | 43 | Mar 2010 | \$1,093.85 | \$1,000.00 | 3/2/10 | \$11,226.25 |
| 20 | 44 | Apr 2010 | \$1,093.85 | \$1,000.00 | 4/1/10 | \$10,226.25 |
| 21 | 45 | May 2010 | \$1,093.85 | | | |

//

//

//

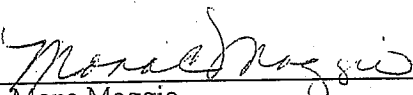
¹ Made two payments equaling \$900: \$800 rec'd on 10/14 & \$100 rec'd on 10/29

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Optometry issue a decision:

1. Revoking the probation that was granted by the Board of Optometry in Case No. 2002 162 and imposing the disciplinary order that was stayed, thereby revoking Certificate of Registration to Practice Optometry No. 10148 issued to Huyen Mong Nguyen;
2. Revoking or suspending Certificate of Registration to Practice Optometry No. 10148 issued to Huyen Mong Nguyen; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/13/10


Mona Maggio
Executive Officer
Board of Optometry
Department of Consumer Affairs
State of California
Complainant

SA2010100557
pet revoke prob.rtf

Exhibit A

Decision and Order

Board of Optometry Case No. 2002 162

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2002 162

HUYEN MONG NGUYEN
1010-B Florin Road
Sacramento, CA 95831

OAH No. 2002 162

Optometry No. 10148

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by
the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 10, 2006.

It is so ORDERED June 8, 2006.



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-6292
Facsimile: (916) 327-8643

6 Attorneys for Complainant

7
8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2002 162

11 HUYEN MONG NGUYEN
12 1010-B Florin Road
13 Sacramento, CA 95831

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Optometry No. 10148

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Taryn Smith (Complainant) is the Executive Officer of the State Board of
21 Optometry. She brought this action solely in her official capacity and is represented in this
22 matter by Bill Lockyer, Attorney General of the State of California, by Jeffrey M. Phillips,
23 Deputy Attorney General.

24 2. Respondent Huyen Mong Nguyen (Respondent) is represented in this
25 proceeding by attorney J. Kevin Elmendorf, whose address is 2295 Gateway Oaks Drive, Suite
26 105, Sacramento, CA 95833-3225.

27 3. On or about September 10, 1993, the State Board of Optometry issued
28 Optometry License No. 10148 to Huyen Mong Nguyen (Respondent). The Optometry license

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 2002
2 162 and will expire on October 31, 2007, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2002 162 was filed before the State Board of Optometry
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 September 29, 2005. Respondent timely filed her Notice of Defense contesting the Accusation.
8 A copy of Accusation No. 2002 162 is attached as exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 2002 162. Respondent has also
13 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
14 Settlement and Disciplinary Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
18 the right to present evidence and to testify on her own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. 2002 162.

27 ///

28 ///

9. Respondent agrees that her Optometry license is subject to discipline and she agrees to be bound by the State Board of Optometry (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the State Board of Optometry or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

//

//

//

1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that Optometry License No. 10148 issued to
3 Respondent Huyen Mong Nguyen (Respondent) is revoked. However, the revocation is stayed
4 and Respondent is placed on probation for five (5) years on the following terms and conditions.

5 1. ACTUAL SUSPENSION. Optometry License No. 10148 issued to
6 Respondent Huyen Mong Nguyen is suspended for a period of fourteen (14) consecutive days,
7 commencing 90 days from the effective date of this Disciplinary Order.

8 2. OBEY ALL LAWS. - Respondent shall obey all federal, state and local
9 laws. A full and detailed account of any and all violations of law shall be reported by the
10 Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit
11 monitoring of compliance with this condition, Respondent shall submit completed fingerprint
12 forms and fingerprint fees within 45 days of the effective date of the decision, unless previously
13 submitted as part of the licensure application process.

14 3. COMPLY WITH THE BOARD'S PROBATION PROGRAM -
15 Respondent shall fully comply with the conditions of the Probation Program established
16 by the Board and cooperate with representatives of the Board in its monitoring and investigation
17 of Respondent's compliance with the Board's Probation Program. Respondent shall inform the
18 Board in writing within no more than 15 days of any address change and shall at all times
19 maintain an active, current license status with the Board, including during any period of
20 suspension.

21 Respondent shall comply with the Board's probation surveillance program,
22 including but not limited to allowing access to the Respondent's optometric practice(s) and
23 patient records upon request of the Board or its agent.

24 Upon successful completion of probation, Respondent's license shall be fully
25 restored.

26 4. REPORT IN PERSON - Respondent, during the period of probation, shall
27 appear in person at interviews/meetings as directed by the Board or its designated
28 representatives.

1 5. RESIDENCY: PRACTICE. OR LICENSURE OUTSIDE OF STATE -

2 Periods of residency or practice as an optometrist outside of California shall not
3 apply toward a reduction of this probation time period. Respondent's probation is tolled, if and
4 when she resides outside of California. The Respondent must provide written notice to the Board
5 within 15 days of any change of residency or practice outside the state, and within 30 days prior
6 to re-establishing residency or returning to practice in this state.

7 Respondent shall provide a list of all states and territories where she has ever been
8 licensed as an optometrist. Respondent shall further provide information regarding the status of
9 each license and any changes in such license status during the term of probation. Respondent
10 shall inform the Board if he/she applies for or obtains a new optometry license during the term of
11 probation.

12 6. SUBMIT WRITTEN REPORTS - Respondent, during the period of
13 probation, shall submit or cause to be submitted such written reports/declarations and verification
14 of actions under penalty of perjury, as required by the Board. These reports/declarations shall
15 contain statements relative to Respondent's compliance with all of the conditions of the Board's
16 Probation Program. Respondent shall immediately execute all release of information forms as
17 may be required by the Board or its representatives.

18 Respondent shall provide a copy of this decision to the optometric regulatory
19 agency in every state and territory in which she has an optometry license.

20 7. FUNCTION AS AN OPTOMETRIST- Respondent, during the period of
21 probation, shall engage in the practice of optometry in California for a minimum of 24 hours per
22 week for 6 consecutive months within each year of the probationary period, or as determined by
23 the Board.

24 For purposes of compliance with the section, "engage in the practice of
25 optometry" may include, when approved by the Board, volunteer work as an optometrist, or work
26 in any non-direct patient care position that requires licensure as an optometrist.

27 If Respondent has not complied with this condition during the probationary term,
28 and the Respondent has presented sufficient documentation of her good faith efforts to comply

with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

8. SUPERVISION - Respondent shall practice under the supervision of a Board-approved optometrist to conduct on site review of billings, patient records, and prescriptions. The cost of the on site review will be borne by Respondent.

9. EMPLOYMENT LIMITATIONS - Respondent shall not work in any health care setting as a supervisor of optometrists. The Board may additionally restrict Respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case basis. Respondent shall not work as a faculty member in an approved school of optometry or as an instructor in a Board approved continuing education program.

10. COMPLETE OPTOMETRY COURSE(S) - Respondent, at her own expense, shall enroll and successfully complete continuing education courses in ethics relevant to the practice of optometry no later than six months prior to the end of her probationary term. The amount of courses will be determined by the Board.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$21,126.25. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than the end of the probationary period. A discount of 20% will be given if Respondent makes full payment within 60 days of the effective date of this order.

If Respondent has not complied with this condition during the time indicated, and has presented sufficient documentation of her good faith efforts to comply, and if no other

conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. VIOLATION OF PROBATION - If Respondent violates the conditions of her probation, the Board, after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the Respondent's license.

If, during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. LICENSE SURRENDER - During Respondent's term of probation, if she ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. An optometrist whose license has been surrendered may petition the Board for reinstatement no sooner than one year from the effective date of the disciplinary decision.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, J. Kevin Elmendorf. I understand the stipulation and the effect it will have on my Optometry License. I enter into this Stipulated Settlement and

///

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the State Board of Optometry.

3 DATED: 05/11/06

4 
5 HUYEN MONG NGUYEN (Respondent)
Respondent

6 I have read and fully discussed with Respondent Huyen Mong Nguyen the terms
7 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
8 Order. I approve its form and content.

9 DATED: 5/12/06


10 
11 J. KEVIN ELMENDORF
Attorney for Respondent

12
13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the State Board of Optometry of the Department of Consumer
16 Affairs.

17 DATED: 5/15/06

18 BILL LOCKYER, Attorney General
19 of the State of California

20 
21 JEFFREY M. PHILLIPS
22 Deputy Attorney General
23 Attorneys for Complainant

24 DOJ Matter ID: SA2005100123
10239878.wpd

25
26
27
28

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2002 162

HUYEN MONG NGUYEN
1010-B Florin Road
Sacramento, CA 95831

OAH No. 2002 162

Optometry No. 10148

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 10, 2006.

It is so ORDERED June 8, 2006.



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255

Sacramento, CA 94244-2550
5 Telephone: (916) 324-6292
Facsimile: (916) 327-8643

6 Attorneys for Complainant

7
8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2002 162

11 HUYEN MONG NGUYEN
12 1010-B Florin Road
13 Sacramento, CA 95831

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Optometry No. 10148

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Taryn Smith (Complainant) is the Executive Officer of the State Board of
21 Optometry. She brought this action solely in her official capacity and is represented in this
22 matter by Bill Lockyer, Attorney General of the State of California, by Jeffrey M. Phillips,
23 Deputy Attorney General.

24 2. Respondent Huyen Mong Nguyen (Respondent) is represented in this
25 proceeding by attorney J. Kevin Elmendorf, whose address is 2295 Gateway Oaks Drive, Suite
26 105, Sacramento, CA 95833-3225.

27 3. On or about September 10, 1993, the State Board of Optometry issued
28 Optometry License No. 10148 to Huyen Mong Nguyen (Respondent). The Optometry license

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 2002
2 162 and will expire on October 31, 2007, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2002 162 was filed before the State Board of Optometry
5 (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 September 29, 2005. Respondent timely filed her Notice of Defense contesting the Accusation.
8 A copy of Accusation No. 2002 162 is attached as exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 2002 162. Respondent has also
13 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
14 Settlement and Disciplinary Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
18 the right to present evidence and to testify on her own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. 2002 162.

27 ///

28 ///

9. Respondent agrees that her Optometry license is subject to discipline and she agrees to be bound by the State Board of Optometry (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the State Board of Optometry or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

//

11

//

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometry License No. 10148 issued to Respondent Huyen Mong Nguyen (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. ACTUAL SUSPENSION. Optometry License No. 10148 issued to Respondent Huyen Mong Nguyen is suspended for a period of fourteen (14) consecutive days, commencing 90 days from the effective date of this Disciplinary Order.

2. OBEY ALL LAWS. - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

3. COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Respondent shall comply with the Board's probation surveillance program, including but not limited to allowing access to the Respondent's optometric practice(s) and patient records upon request of the Board or its agent.

Upon successful completion of probation, Respondent's license shall be fully restored.

4. REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

1 5. RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE -

2 Periods of residency or practice as an optometrist outside of California shall not
3 apply toward a reduction of this probation time period. Respondent's probation is tolled, if and
4 when she resides outside of California. The Respondent must provide written notice to the Board
5 within 15 days of any change of residency or practice outside the state, and within 30 days prior
6 to re-establishing residency or returning to practice in this state. ✓

7 Respondent shall provide a list of all states and territories where she has ever been
8 licensed as an optometrist. Respondent shall further provide information regarding the status of
9 each license and any changes in such license status during the term of probation. Respondent
10 shall inform the Board if he/she applies for or obtains a new optometry license during the term of
11 probation.

12 6. SUBMIT WRITTEN REPORTS - Respondent, during the period of
13 probation, shall submit or cause to be submitted such written reports/declarations and verification
14 of actions under penalty of perjury, as required by the Board. These reports/declarations shall
15 contain statements relative to Respondent's compliance with all of the conditions of the Board's
16 Probation Program. Respondent shall immediately execute all release of information forms as
17 may be required by the Board or its representatives.

18 Respondent shall provide a copy of this decision to the optometric regulatory
19 agency in every state and territory in which she has an optometry license.

20 7. FUNCTION AS AN OPTOMETRIST- Respondent, during the period of
21 probation, shall engage in the practice of optometry in California for a minimum of 24 hours per
22 week for 6 consecutive months within each year of the probationary period, or as determined by
23 the Board. ✓

24 For purposes of compliance with the section, "engage in the practice of
25 optometry" may include, when approved by the Board, volunteer work as an optometrist, or work
26 in any non-direct patient care position that requires licensure as an optometrist.

27 If Respondent has not complied with this condition during the probationary term,
28 and the Respondent has presented sufficient documentation of her good faith efforts to comply

with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

8. SUPERVISION - Respondent shall practice under the supervision of a Board-approved optometrist to conduct on site review of billings, patient records, and prescriptions. The cost of the on site review will be borne by Respondent.

9. EMPLOYMENT LIMITATIONS - Respondent shall not work in any health care setting as a supervisor of optometrists. The Board may additionally restrict Respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case basis. Respondent shall not work as a faculty member in an approved school of optometry or as an instructor in a Board approved continuing education program.

10. COMPLETE OPTOMETRY COURSE(S) - Respondent, at her own expense, shall enroll and successfully complete continuing education courses in ethics relevant to the practice of optometry no later than six months prior to the end of her probationary term. The amount of courses will be determined by the Board.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$21,126.25. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than the end of the probationary period. A discount of 20% will be given if Respondent makes full payment within 60 days of the effective date of this order.

If Respondent has not complied with this condition during the time indicated, and has presented sufficient documentation of her good faith efforts to comply, and if no other

conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. VIOLATION OF PROBATION - If Respondent violates the conditions of her probation, the Board, after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the Respondent's license.

If, during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. LICENSE SURRENDER - During Respondent's term of probation, if she ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. An optometrist whose license has been surrendered may petition the Board for reinstatement no sooner than one year from the effective date of the disciplinary decision.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, J. Kevin Elmendorf. I understand the stipulation and the effect it will have on my Optometry License. I enter into this Stipulated Settlement and

///

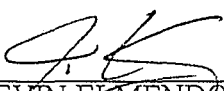
1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the State Board of Optometry.

3 DATED: 05/11/06.

4 
HUYEN MONG NGUYEN (Respondent)
5 Respondent

6 I have read and fully discussed with Respondent Huyen Mong Nguyen the terms
7 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
8 Order. I approve its form and content.

9 DATED: 5/12/06.


10 
11 J. KEVIN ELMENDORF
Attorney for Respondent

12
13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the State Board of Optometry of the Department of Consumer
16 Affairs.

17 DATED: 5/15/06.

18 BILL LOCKYER, Attorney General
19 of the State of California

20 
21 JEFFREY M. PHILLIPS
22 Deputy Attorney General
Attorneys for Complainant

23
24 DOJ Matter ID: SA2005100123
10239878.wpd

25
26
27
28

Exhibit A
Accusation No. 2002 162

BILL LOCKYER, Attorney General
of the State of California
JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-6292
Facsimile: (916) 322-8288

Attorneys for Complainant

**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2002 162

HUYEN MONG NGUYEN
1010-B Florin Road
Sacramento, California 95831

A C C U S A T I O N

Certificate of Registration to Practice Optometry No. 10148
Fictitious Name Permit Number 2202

Respondent.

Complainant alleges:

PARTIES

1. Taryn Smith ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the State Board of Optometry ("Board"), Department of Consumer Affairs.

2. On or about September 10, 1993, the Board issued Certificate of Registration to Practice Optometry Number 10148 to Huyen Mong Nguyen ("Respondent"). Respondent's certificate of registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2005, unless renewed.

3. On or about November 9, 1995, the Board issued Fictitious Name Permit Number 2202 to Respondent, authorizing the use of the fictitious name, "In Focus Optometry", in

1 conjunction with Respondent's optometric practice located at 1010-B Florin Road, Sacramento,
2 California. Respondent's fictitious name permit was in full force and effect at all times relevant
3 to the charges brought herein and will expire on January 31, 2006, unless renewed.

4 **STATUTORY PROVISIONS**

5 4. Business and Professions Code ("Code") section 3090 states, in pertinent
6 part:

7 The certificate of registration of any person registered under this chapter,
8 or any former act relating to the practice of optometry, may be revoked or
suspended for a fixed period by the board for any of the following:

9

10 (b) Unprofessional conduct . . .

11 5. Code section 118, subdivision (b), provides, in pertinent part, that the
12 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
13 action during the period within which the license may be renewed, restored, reissued or
14 reinstated.

15 6. Code section 3125 states, in pertinent part:

16 It is unlawful to practice optometry under a false or assumed name, or to
17 use a false or assumed name in connection with the practice of optometry, or to
18 make use of any false or assumed name in connection with the name of a person
19 licensed pursuant to this chapter. However, the board may issue written permits
authorizing an individual optometrist or an optometric group or optometric
corporation to use a name specified in the permit in connection with its practice if,
and only if, the board finds to its satisfaction that:

20

21 (d) No charges which could result in revocation or suspension of an
22 optometrist's certificate to practice optometry are pending against any optometrist
practicing at the location.

23 Permits issued under this section by the board shall expire and become
24 invalid unless renewed at the times and in the manner provided in Article 7
(commencing with Section 3145) for the renewal of certificates issued under this
25 chapter. The board may charge an annual fee, not to exceed ten dollars (\$ 10) for
the issuance or renewal of each such permit.

26 Any permit issued under this section may be revoked or suspended
27 at any time that the board finds that any one of the requirements for original
issuance of a permit, other than under subdivision (d), is no longer being

28 ///

fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

In the event the board revokes or suspends the certificate to practice optometry of an individual optometrist or any member of a corporation or group to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.

7. Code section 810 states, in pertinent part:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance . . .

8. Code section 3101 states that the obtaining of any fee by fraud or misrepresentation constitutes unprofessional conduct.

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

10. On or about February 13, 2003, Joy Cornelison ("Cornelison"), Appeal and Hearing Coordinator for Vision Service Plan ("VSP"), notified the Board that an Adverse Action Report had been filed with the National Practitioner Data Bank ("NPDB"), indicating that VSP permanently revoked Respondent's clinical privileges effective January 23, 2003, for submitting false information on claim forms. On or about February 25, 2003, the Board requested an investigation by the Division of Investigation ("DOI") of the Department of Consumer Affairs concerning the information reported to NPDB.

11. DOI investigator Nickie Bach ("Bach") obtained copies of certain documents and patient records from VSP and Respondent and conducted interviews with various

///

///

1 witnesses, including Respondent. During her interview with Bach on September 13, 2004,
2 Respondent admitted, in substance, the following:

3 12. Respondent became a VSP provider in 1999. In 2002, at the time of
4 VSP's audit of Respondent's claim records, Respondent's optometry practice, In Focus
5 Optometry, was staffed by two salespersons (including the receptionist who sold glasses), a full
6 time optician, and Respondent. Respondent stated that when she sees a new patient, it is her
7 practice to have the patient fill out a history form. A pretest is conducted, and the patient's visual
8 field is checked. Respondent then performs a comprehensive exam, and if necessary, fills out a
9 prescription. If the patient is interested in buying glasses, the receptionist/salesperson helps the
10 patient choose glasses. Respondent's patient records typically contain information showing what
11 the patient purchased, insurance billing information, the patient history sheet, and exam findings.

12 13. Respondent admitted that some of the billings submitted to VSP were not
13 accurate and that she submitted eClaims to VSP with prescriptions different from those noted in
14 the patients' files. Respondent admitted further that she "wanted to make her customers happy"
15 by helping them buy products that were not covered by insurance. For example, if a client
16 wanted sunglasses that were not covered by his or her policy, Respondent offered to bill VSP for
17 glasses and frames. Respondent would obtain fees from VSP that would, "be put towards the
18 purchase of sunglasses." If a family wanted designer plano sunglasses^{1/} costing \$330.00,
19 Respondent would bill VSP using the maximum plan allowance and would place a multiple
20 order for lenses and frames. Respondent stated that bargaining and looking for ways to offset
21 costs are common cultural practices in the Asian, Black, and Latino communities and that she
22 generally did not offer bargains to her Caucasian clientele because, typically, "white people
23 follow the rules." Respondent admitted that she stopped her former billing practices because she
24 "got caught."

25 ///

26 ///

27
28 1. "Plano" sunglasses are fashion sunglasses with simple sunlenses (meaning without prescription) in them.

FIRST CAUSE FOR DISCIPLINE

**(Knowingly Presenting False or Fraudulent Claims
for Payment Under a Contract of Insurance)**

14. Respondent's certificate of registration to practice optometry is subject to disciplinary action pursuant to Code section 810, subdivision (a)(1) and (2), in that in and between May 2000 and July 2002, she knowingly presented or caused to be presented false or fraudulent claims for the payment of losses under contracts of insurance and/or knowingly prepared, made or subscribed a writing and allowed it to be presented or used in support of a false or fraudulent claim, as follows:

Patient H. C.

a. On or about April 23, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of comprehensive optometry services and products allegedly provided to patient H.C. on April 23, 2002, including an eye examination, frames and single vision clear lenses. This claim was billed under patient H.C.'s VSP coverage. On or about April 24, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of comprehensive optometry services and products allegedly provided to patient H.C. on April 22, 2002, including an eye examination, frames, and single vision clear lenses. This second claim was billed under the VSP plan for A.C. In fact, Respondent did not provide any service or products to the patient on April 22, 2002, and double billed VSP for the comprehensive optometry services and products. On May 15, 2002, VSP issued Check Number 824852 in the amount of \$181.64 to Respondent in payment of said claim.

Patient R. D.

b. On or about May 2, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of comprehensive optometry services and products allegedly provided to patient R. D. on March 1, 2002, including an eye examination, elective contact lenses, and single vision disposable lenses (7 day supply). In fact, Respondent did not provide that service or those products to the patient on that date. On May 15, 2002, VSP issued Check Number 824852 in the amount of \$490.00 to Respondent in payment of said claim.

Patient L. G.

c. On or about December 27, 2001, Respondent submitted or caused to be submitted to VSP a claim for payment of optometry services and products allegedly provided to patient L. G. on December 27, 2001, including an eye examination and contacts. In fact, Respondent did not provide that service or product to the patient on that date. The prescription for contact lenses on this date did not match the patient's prescription written by Respondent on January 25, 2002.

d. On or about January 2, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of optometry services and products allegedly provided to patient L. G. on January 2, 2002, including an eye examination, frame, and single vision lenses. In fact, Respondent did not provide that service or those products to the patient on that date.

Patient N. H.

e. On January 3, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of comprehensive optometric services and products (contact lenses) allegedly provided to patient N. H. on January 3, 2002. On January 4, 2002, Respondent prescribed contact lenses for the patient. On or about January 9, 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of optometry products allegedly provided to patient N. H. on January 3, 2002, including a frame and Varilux Comfort Progressive Polycarbonate lenses. On January 31, 2002, VSP issued Check Number 725045 in the amount of \$200.49 to Respondent in payment of said claim.

Patient A. H.

f. On or about May 13, 2000, Respondent submitted or caused to be submitted to VSP an eClaim for payment of comprehensive optometry services and products allegedly provided to patient A.H. on May 13, 2000, including an eye examination, lenses, and a frame. On May 13, 2000, Respondent documented in the patient's examination record: "02/99 No Rx needed," circled and crossed-out the recommendation "No Rx needed" and circled "optional" under the recommendation "Rx change optional." The patient's written prescription

1 for "+0.25 DS O.U." dated May 11, 2000, is an inconsequential and non-therapeutic prescription.
2 Respondent documented in the December 26, 2001 patient record: "5/31/00 No Rx needed -
3 optional."

4 g. On or about February 14, 2002, Respondent submitted or caused to be
5 submitted to VSP an eClaim for payment of optometry products allegedly provided to patient
6 A. H. on December 31, 2001, including a frame and Panamic Progressive (multifocal) plastic
7 lenses ("2nd pair"). On February 26, 2002, Respondent submitted, or caused to be submitted, to
8 VSP another eClaim for payment of a comprehensive eye examination, frame, and AO Compact
9 Progressive (multifocal) plastic lenses allegedly provided to the patient on December 31, 2001.
10 In fact, on December 26, 2001, the patient's medical records note that Respondent prescribed
11 *single vision - near* prescription lenses for the patient (as opposed to multifocal lenses). On
12 March 15, 2002, VSP issued two checks to Respondent in payment of said claims: a check in the
13 sum of \$215.38 and a check in the sum of \$275.53.

14 **Patient L.L.**

15 h. On or about May 18, 2002, Respondent submitted or caused to be
16 submitted to VSP an eClaim for payment of comprehensive optometry services and products
17 allegedly provided to patient L.L. on May 18, 2002, including an eye examination and elective
18 contact lenses/single vision colored soft contacts. The patient's prescription of -0.25 DS O.U.
19 dated May 18, 2002, is inconsequential and non-therapeutic. Respondent also documented in the
20 patient's medical records "Rx change optional". On June 30, 2002, VSP issued Check Number
21 867569 in the amount of \$350.00 to Respondent in payment of the claim.

22 i. On June 19, 2002, Respondent submitted, or caused to be submitted, to
23 VSP an eClaim for payment of a frame and Varilux *Progressive* (multifocal) lenses (identified as
24 "2nd pair") allegedly provided to the patient on May 18, 2002, although there is no examination
25 record to support a prescription for multifocal lenses. On July 15, 2002, VSP issued Check
26 Number 881708 in the amount of \$215.49 to Respondent in payment of the latter claim.

27 **Patient M. L.**

28 j. On or about *July 31, 2001*, Respondent submitted or caused to be

1 submitted to VSP an eClaim for payment of comprehensive optometry services and products
2 allegedly provided to patient M.L. on *August 4, 2001*, including an eye examination and elective
3 contact lenses/single vision colored soft lenses. The patient's prescription of -0.25 DS O.U.
4 dated August 4, 2001, is inconsequential and non-therapeutic. Respondent also documented in
5 the patients medical records "Rx change optional". On August 31, 2001, VSP issued Check
6 Number 5839897 in the amount of \$350.00 to Respondent in payment of the claim.

7 **Patient S.L.**

8 k. On or about *July 31, 2001*, Respondent submitted or caused to be
9 submitted to VSP an eClaim for payment of comprehensive optometry services and products
10 allegedly provided to patient S.L. on *August 4, 2001*, including an eye examination and elective
11 contact lenses/single vision colored soft lenses. In fact, Respondent documented in the patient's
12 examination record dated August 4, 2001, that the patient's distance and near vision were "O.K."
13 and noted "No Rx needed" and "Rx change optional." On or about August 16, 2001, Respondent
14 submitted or caused to be submitted to VSP an eClaim for payment of optometry services and
15 products allegedly provided to patient S.L. on August 4, 2001, including single vision lenses and
16 frames. On August 31, 2001, VSP issued Check Number 5839 in the amount of \$350.00 to
17 Respondent in payment of the claim.

18 l. On or about May 18, 2002, Respondent submitted or caused to be
19 submitted to VSP an eClaim for payment of comprehensive optometry services and products
20 allegedly provided to patient S.L. on *June 15, 2002*, including an eye examination and elective
21 contact lenses/single vision colored soft contacts. In fact, Respondent documented in the
22 patient's examination record dated June 15, 2002, "dist. O.K. Near O.K." and "No Rx needed."
23 On June 30, 2002, VSP issued Check Number 867569 in the amount of \$350.00 to Respondent
24 in payment of the claim.

25 **Patient L.M.**

26 m. On or about June 5, 2002, Respondent submitted or caused to be submitted
27 to VSP an eClaim for payment of comprehensive optometry services and products allegedly
28 provided to patient L.M. on April 30, 2002, including an eye examination and spectacle frames.

1 On or about June 20, 2002, Respondent submitted or caused to be submitted to VSP two separate
2 eClaims. The first claim for payment for comprehensive optometry services and products was
3 allegedly provided on April 30, 2002, including an eye exam and frames. The second eClaim
4 was for payment of a pair of identical frames also allegedly provided to patient L.M. on April 30,
5 2002 (identified as "2nd pair.") In fact, Respondent documented in the patient's examination
6 record dated April 30, 2002, "No Rx needed." On June 30, 2002, VSP issued two checks to
7 Respondent in payment of the claims: a check in the amount of \$150.08 and a check in the
8 amount of \$89.93.

9 **Patient L. R.**

10 n. On or about September 5, 2002, Respondent submitted or caused to be
11 submitted to VSP an eClaim for payment of optometry services allegedly provided to patient
12 L.R. on September 4, 2002, including a comprehensive eye examination. On or about January 4,
13 2002, Respondent submitted or caused to be submitted to VSP an eClaim for payment of
14 comprehensive optometry services and products allegedly provided to patient L. R. on September
15 27, 2001, including an eye examination, bifocal lenses, and a frame. In fact, the patient's
16 prescription dated September 27, 2001, written by Respondent, was for *single vision* lenses. On
17 or about January 15, 2002, VSP issued Check Number 710877 to Respondent in the amount of
18 \$191.38 in payment of the claim.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Obtaining Fees by Fraud or Misrepresentation)**

21 15. Respondent's certificate of registration to practice optometry is subject to
22 disciplinary action pursuant to Code section 3090, subdivision (b), for unprofessional conduct, as
23 defined in Code section 3101. In and between May 2000 and July 2002, Respondent
24 obtained fees from VSP by fraud or misrepresentation, as set forth in paragraph 14 above.

25 **OTHER MATTERS**

26 16. Pursuant to Code section 3125, if Certificate of Registration to Practice
27 Optometry Number 10148, issued to Respondent Huyen Mong Nguyen, is revoked or suspended,
28 the Board may revoke or suspend Fictitious Name Permit Number 2202 issued to Respondent.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the State Board of Optometry issue a decision:

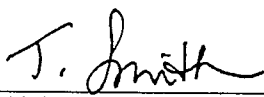
4 1. Revoking or suspending Certificate of Registration to Practice Optometry
5 Number 10148, issued to Huyen Mong Nguyen;

6 2. Revoking or suspending Fictitious Name Permit Number 2202, issued to
7 Huyen Mong Nguyen;

8 3. Ordering Huyen Mong Nguyen to pay the State Board of Optometry the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: 9/26/05

13
14 
15 TARYN SMITH
16 Executive Officer
17 State Board of Optometry
18 Department of Consumer Affairs
19 State of California
20 Complainant
21
22
23
24
25
26
27
28

03581-110-SA2005100123
phd; 07/13/2005



Board of Optometry
400 R Street, Suite, 4090, Sacramento, CA. 95814
Tel: (916) 323-8720
www.optometry.ca.gov



Via Certified Mail

NOTICE OF CITATION
AND
ASSESSMENT OF ADMINISTRATIVE FINE

Date of Assessment: March 12, 2002

Huyen Mong Nguyen, O.D.
1010 B Florin Road
Sacramento, CA 95831

RE: CASE NUMBER CC 2001 185

Receipt for Certified Mail 7099 3220 0005 7254 7480

Dear Dr. Nguyen:

The Board of Optometry has conducted an investigation of your practice of optometry. As a result of the findings, this citation is being issued by the board in accordance with Business and Professions Code Sections 125.9 and 3025 and of the California Code of Regulations Sections 1578 through 1581 for violations of law, which were found during the investigation.

This citation consists of five (5) pages. Pages three (3) through five (5) of this citation: (1) described with particularity the nature of the violation(s); (2) include specific references to the provision(s) of law, which were violated; and (3) contains an assessment of civil fines for each violation. **IT IS YOUR RESPONSIBILITY TO READ THE ENTIRE CITATION.**

Please be advised that, if you want to contest the finding(s) of the violation(s), a hearing must be requested by written notice to the board at the above address ***within thirty (30) days of the date of assessment, given above.***

Further, be advised that if you do **NOT** want to contest the finding(s) of the violation(s), you must pay the fine **within thirty (30) days of the date of assessment, given above.** Failure of a licensee to pay a fine within thirty (30) days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board.

Huyen Mong Nguyen, O.D.

March 12, 2002

Page Two

In addition, where a citation is not contested and a fine not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

Payment of the fine shall not contribute an admission of the violation(s) charged. However, payment of a fine to satisfy an assessment based on a finding of a violation(s) is considered satisfactory resolution of the matter for purposes of public disclosure.

Fines assessed pursuant to Business and Professions Code Section 125.9 and 3025 and the California Code of Regulations Sections 1578 through 1581 are assessed as follows:

- (1) Violation of Section 3070 or 3075 of the Business and Professions Code: not less than fifty dollars (\$50.) or more than five hundred dollars (\$500.) for each violation per day.
- (2) Violation of Section 1505 or 1506 of the California Code of Regulations: not less than fifty dollars (\$50.) or more than five hundred dollars (\$500.) for each violation per day.

Your attention and cooperation in this matter is suggested. If you have any questions regarding this matter, please contact Theresa Kubo at (800) 547-4576.

Sincerely,

Original Signed

By KAREN L. OLLINGER

KAREN L. OLLINGER
Executive Officer

Attachments

cc: Huyen Mong Nguyen, O.D. – Certified Mail Receipt # 7099 3220 0005 7254 7756
650 Castro Street, Suite 150
Mountain View, CA 94401

Huyen Mong Nguyen, O.D.

March 12, 2002

Page Three

Item 1

Section Violated: 3070

Description of Violation:

Address of Optometrist; Notice by Mail. Before engaging in the practice of optometry, each registered optometrist shall notify the board in writing of the address or addresses where he is to engage, or intends to engage, in the practice of optometry and, also, of any changes in his place of practice. The practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041. Any notice required to be given by the board to any registered optometrist may be given by United States mail to this address, postage thereon prepaid.

Based upon consumer complaint information and correspondence written by patient Anthony A. Mendonza and received in this office on February 14, 2002. The written correspondence and consumer complaint indicates that the patient was seen at office located at 650 Castro Street, Suite 150, Mountain View, California 94401.

Based upon the information obtained the Board of Optometry has no record of you being licensed to practice at this location of 650 Castro Street, Suite 150, Mountain View, California 94401. The Boards records show that your principal and only place of practice to be at 1010 B Florin Road, Sacramento, California 95831.

Furthermore, you received a Notice of Violation on March 7, 1996 via certified mail from the Board informing you of practicing at an unauthorized location and using an unauthorized name.

Therefore, a certificate of registration could not be properly posted at any of the above office.

Administrative Fine Assessed: \$50.00

Huyen Mong Nguyen, O.D.
March 12, 2002
Page Four

Item 2
Section Violated: 3075

Description of Violation: Display of Certificate; Multiple Offices. Each holder of a certificate of registration or a certificate of issuance of his certificate of registration shall keep it conspicuously posted in his office or place of practice at all times.

Based upon the Board's records there is no record of you possessing a license for the following location:

650 Castro Street, Suite 150
Mountain View, CA 94401

Therefore, a certificate of registration could not be properly posted at any of the above listed office.

Administrative Fine Assessed: \$50.00

Item 3
Section Violated: 1505

Description of Violation: Notification of Intention to Engage in Practice. The notification of intention to engage in the practice of optometry which is required by Section 3070 of the Business and Professions Code shall be addressed to the Board at its office in Sacramento.

The Board has no record of you being licensed to practice at the following location:

650 Castro Street, Suite 150
Mountain View, CA 94401

Therefore, a certificate of registration could not be properly posted at any of the above listed office.

Administrative Fine Assessed: \$ 0

Huyen Mong Nguyen, O.D.
March 12, 2002
Page Five

Item 4

Section Violated: 1506

Description of Violation: Certificate Posting. A certificate of registration, i.e. original wall certificate, is an original certificate of registration and license to practice optometry in California granted by the Board to a natural person who has qualified for the same and it may not be assigned or transferred to another person but shall; notwithstanding whether it is replaced by a certification of the issuance of a certificate of registration, i.e. duplicate wall certificate, remain valid and in force unless it is revoked or suspended and not reinstated or it is expired and not renewed or restored.

The Board has no record of you being licensed to practice at the following location:

650 Castro Street, Suite 150
Mountain View, CA 94401

Therefore, a certificate of registration could not be properly posted at any of the above listed office.

Administrative Fine Assessed: \$ 0
